

33. Golden Orange Broadcasting Co., Inc.
34. Granite Broadcasting Corporation
35. Great American Broadcasting Company, McGraw-Hill Broadcasting, Inc. and The New York Times Company
36. GTE Service Corporation
37. Hammett & Edison, Inc.
38. InterMedia Partners
39. International Family Entertainment, Inc.
40. KTFH-TV, Conroe, Texas
41. Liberty Cable Company, Inc.
42. Malrite Communications Group, Inc.
43. Mid-State Television, Inc.
44. Moorestown, New Jersey, Cable TV Advisory Committee
45. Moran Communications, Inc.
46. Motion Picture Association of America, Inc.
47. National Association of Broadcasters
48. National Association of College Broadcasters
49. National Association of Telecommunications Officers and Advisors, National League of Cities, United States Conference of Mayors, and the National Association of Counties
50. National Basketball Association and National Hockey League
51. National Broadcasting Company, Inc.
52. National Cable Satellite Corporation
53. National Cable Television Association, Inc.
54. National Captioning Institute, Inc.
55. National Private Cable Association, Cable Plus, MaxTel Cablevision, Pacific Cablevision and Stellarvision
56. Nationwide Communications Inc.
57. New England Telephone and Telegraph Company and New York Telephone Company
58. Newhouse Broadcasting Corporation
59. PrimeTime 24 Joint Venture
60. Puerto Rico Cable TV Association
61. R&R Media Corporation
62. Satellite Broadcasting and Communications Association of America
63. Southwest Missouri Cable TV, Inc.
64. Spectradyne, Inc.
65. Standard Tobacco Company, Inc.
66. Tel-Com, Inc.
67. Tele-Communications, Inc.
68. Time Warner Entertainment Company, L.P.
69. TKR Cable Company
70. Tribune Broadcasting Company
71. Trinity Christian Center of Santa Ana, Inc. d/b/a Trinity Broadcasting Network, National Minority TV, Inc., Tri-State Christian TV, Inc., All-American TV, Inc., Community Educational Television, Inc., and Jacksonville Educators Broadcasting, Inc.
72. Triplett & Associates, Inc.
73. Turner Broadcasting System, Inc.
74. United Communications Corporation
75. United States Copyright Office
76. United States Telephone Association
77. United Video, Inc.

78. Viacom International Inc.
79. Wireless Cable Association International, Inc.
80. WJB-TV Limited Partnership
81. WNYC Communications Group
82. WTKK TV, Inc.

Reply Comments

1. A.C. Nielsen Company
2. Acton Cable Partnership; Allen's Television Cable Service, Inc.; Cable Television Association of Maryland, Delaware and District of Columbia; Century Communications Corp.; Columbia International, Inc.; Frederick Cablevision, Inc.; Gilmer Cable Television Company, Inc.; Greater Media, Inc.; Halcyon Group, Inc.; Helicon Corp.; Jones Intercable, Inc.; KBLCOM Inc.; Monmouth Cablevision Assoc.; MultiVision Cable TV Corp.; OCB Cablevision, Inc.; Rock Associates; TeleCable Corporation; Texas Cable TV Association; West Virginia Cable Television Association; and Zylstra Communications Corporation
3. American Society of Composers, Authors and Publishers, Broadcast Music Inc. and SESAC, Inc.
4. Association for Maximum Service Television, Inc.
5. Association of America's Public Television Stations
6. Association of Independent Television Stations, Inc.
7. Bell Atlantic
8. Burnham Broadcasting Company
9. Capital Cities/ABC, Inc.
10. Caribbean Communications Corp. d/b/a St. Thomas-St. John Cable TV
11. CBS Inc.
12. City of Palm Desert, California
13. Comcast Corporation
14. Community Antenna Television Association, Inc.
15. Community Broadcasters Association
16. Continental Cablevision, Inc.
17. Curators of the University of Missouri
18. Fairfax County, Virginia
19. GTE Service Corporation
20. Independence Public Media of Philadelphia, Inc.
21. InterMedia Partners
22. Major League Baseball (late-filed)
23. Motion Picture Association of America, Inc.
24. National Association of Broadcasters
25. National Association of Telecommunications Officers and Advisors, National League of Cities, United States Conference of Mayors, and the National Association of Counties
26. National Broadcasting Company, Inc.
27. National Cable Television Association, Inc.
28. National Captioning Institute, Inc.
29. National Telephone Cooperative Association
30. Netlink USA
31. Network Affiliated Stations Alliance
32. Newhouse Broadcasting Corporation

33. New Jersey Broadcasters Association and Oklahoma Association of Broadcasters
34. New York State Commission on Cable Television
35. PrimeTime 24 Joint Venture
36. Pulitzer Broadcasting Company
37. Satellite Broadcasting and Communications Association (late-filed)
38. Tele-Communications, Inc.
39. Time Warner Entertainment Company, L.P.
40. Tribune Broadcasting Company
41. Turner Broadcasting System, Inc.
42. TV 14, Inc.
43. United States Telephone Association
44. Viacom International Inc.
45. Westinghouse Broadcasting Company, Inc.
46. WNYC Communications Group

## APPENDIX B

### Final Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need and purpose of this action. This action is taken to implement the provisions of the Cable Television Consumer Protection and Competition Act of 1992 pertaining to the mandatory carriage of broadcast signals ("must-carry") and retransmission consent.

II. Summary of issues raised by comments in response to the Initial Regulatory Flexibility Analysis. No comments were received in response to the request for comments to the Initial Regulatory Flexibility Analysis, however comments received in response to the Notice of Proposed Rule Making indicate that smaller cable systems that primarily serve rural areas are concerned about their ability to compete effectively under the same regulatory scheme as that applied to larger cable systems. Concerns focus generally on the smaller system's ability to financially meet technical requirements and to effectively negotiate for retransmission rights in its market.

III. Significant alternatives considered and rejected. None. The Act is specific with regard to the must-carry and retransmission rights available to broadcasters and the resulting obligation on cable systems. The Act provides that rights and obligations are proportionate to the size of the business.

## APPENDIX C

### Rules

Part 76 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

#### PART 76 -- CABLE TELEVISION SERVICE

1. The Authority Citation for Part 76 is revised to read as follows:

AUTHORITY: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. §§ 152, 153, 154, 301, 303, 307, 308, 309; Secs. 612, 614-615, 623, 632 as amended, 106 Stat. 1460, 47 U.S.C. §532; Sec. 623, as amended, 106 Stat. 1460; 47 U.S.C. §§532, 533, 535, 543, 552.

2. Section 76.5 is amended by revising paragraph (b) and adding paragraphs (nn), (oo) and (pp) to read as follows:

§ 76.5 Definitions.

\* \* \* \* \*

(b) Television station; television broadcast station. Any television broadcast station operating on a channel regularly assigned to its community by § 73.606 of this chapter, and any television broadcast station licensed by a foreign government: Provided however, That a television broadcast station licensed by a foreign government shall not be entitled to assert a claim to carriage, program exclusivity, or retransmission consent authorization pursuant to Subpart D or F of this part, but may otherwise be carried if consistent with the rules on any service tier.

\* \* \* \* \*

(nn) Activated channels. Those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational or governmental use.

(oo) Usable activated channels. Those activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations. See Part 76, Subpart K.

(pp) Principal headend.

- (1) The headend, in the case of a cable system with a single headend or,
- (2) In the case of a cable system with more than one headend, the principal headend designated by the cable operator, except that such designation shall not undermine or evade the requirements of subpart D of this Part. The designation of a principal headend shall be made by May 3, 1993, and each

cable system shall place in its public file the location of its designated principal headend by June 17, 1993, as provided in §76.302. Except for good cause, an operator may not change its choice of principal headend.

3. Section 76.7 is revised in its entirety to read as follows:

Sec. 76.7 Special relief and must-carry complaint procedures.

(a) (1) Petitions for special relief. On petition by a cable television system operator, a franchising authority, an applicant, permittee, or licensee of a television broadcast or translator station, or by any other interested person, the Commission may waive any provision of the rules relating to cable television systems, impose additional or different requirements, or issue a ruling on a complaint or disputed question.

(2) Complaints filed pursuant to §76.61. In response to a complaint filed by a television broadcast station under section 76.61 (must-carry complaint), the Commission may order a cable television system operator to commence or resume carriage of the complaining station, or position or reposition the complaining station's channel on the cable television system, pursuant to Subpart D of this Part.

(b) The petition for special relief or must-carry complaint may be submitted informally, by letter, but shall be accompanied by a certificate of service on any cable television system operator, franchising authority, station licensee, permittee, or applicant, or other interested person who may be directly affected if the relief requested is granted.

(c) (1) The petition for special relief or must-carry complaint shall state the relief requested. It shall state fully and precisely all pertinent facts and considerations relied on to demonstrate the need for the relief requested and to support a determination that a grant of such relief would serve the public interest. Factual allegations shall be supported by affidavit of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.

(2) A petition for special relief or must-carry complaint shall set forth all steps taken by the parties to resolve the problem, except where the only relief sought is a clarification or interpretation of the rules.

(3) An original and two (2) copies of the petition for special relief or must-carry complaint, and all subsequent pleadings shall be filed in accordance with §0.401(a) of the Commission's rules, except that petitions for special relief requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with §0.401(b) of the rules. Must-carry complaints filed pursuant to § 76.61 are not covered by Part 1, Subpart G of this chapter and do not require fees.

(4) (i) Must-carry complaints filed pursuant to §76.61(a) (Complaints regarding carriage of local commercial television stations) shall be accompanied by the notice from the complainant to the cable television system operator (§76.61(a)(1)), and the cable television system operator's response

(§76.61(a)(2)), if any. If no timely response was received, the complaint should so state.

(ii) Must-carry complaints filed pursuant to §76.61(b) (Complaints regarding carriage of qualified local NCE television stations) should be accompanied by any relevant correspondence between the complainant and the cable television system operator.

(iii) No must-carry complaint filed pursuant to §76.61 will be accepted by the Commission if filed more than sixty (60) days after the date of the specific event described in this paragraph. Must-carry complaints filed pursuant to §76.61(a) or §76.61(b) should affirmatively state the specific event upon which the complaint is based, and shall establish that the complaint is being filed within sixty (60) days of such specific event. With respect to must-carry complaints filed pursuant to §76.61(a), the specific event shall be

(A) The denial by a cable television system operator of a request for carriage or channel position contained in the notice required by §76.61(a)(1), or

(B) The failure to respond to such notice within the time period allowed by §76.61(a)(2). With respect to must-carry complaints filed pursuant to §76.61(b), the specific event shall be when the complainant first believes that the cable television system operator has failed to comply with the applicable provisions of Subpart D of this Part.

(d) Interested persons may submit comments or oppositions to a petition for special relief or a must-carry complaint within twenty (20) days after the date of public notice of the filing of such petition or complaint. For good cause shown in the petition for special relief or must-carry complaint, the Commission may, by letter or telegram to known interested persons, specify an altered time for such submissions. Comments or oppositions shall be served on the petitioner or complainant and on all persons listed in petitioner's or complainant's certificate of service, and shall contain a detailed full showing, supported by affidavit, of any facts or considerations relied on.

(e) The petitioner or complainant may file a reply to the comments or oppositions within ten (10) days after their submission, which shall be served on all persons who have filed pleadings and shall also contain a detailed full showing, supported by affidavit, of any additional facts or considerations relied on. For good cause shown, the Commission may specify a shorter time for the filing of reply comments.

(f) The Commission, after consideration of a petition for special relief and the responsive pleadings, may determine whether the public interest would be served by the grant, in whole or in part, or denial of the request, or may issue a ruling on the complaint or dispute. The Commission will resolve must-carry complaints pursuant to paragraphs (a)(4) and (b)(2) of Section 76.61. The Commission may specify other procedures, such as oral argument, evidentiary hearing, or further written submissions directed to particular aspects, as it deems appropriate. In the event that an evidentiary hearing is required, the Commission will determine, on the basis of the pleadings and such other procedures as it may specify, whether temporary relief should be afforded any

party pending the hearing and the nature of any such temporary relief.

(g) On a finding that the public interest so requires, the Commission may determine that a system community unit operating or proposing to operate in a community located outside of the 48 contiguous states shall comply with provisions of Subparts D, F, and G of this part in addition to the provisions thereof otherwise applicable.

Note: Each party filing a petition, comments, opposition or other pleading pursuant to Sec. 76.7 is responsible for the continuing accuracy and completeness of all information in such document. The provisions of Sec. 1.65 of this chapter are wholly applicable to pleadings involving Sec. 76.7, except that where specific provisions of the latter conflict with the former, the specific provisions of Sec. 76.7 are controlling, e.g., where requirements for service on specified parties of certain information may vary.

4. Section 76.51 is amended by revising the names of markets ranked numbers 18, 19 and 27, and by adding a note at the end of the section, to read as follows:

§ 76.51 Major television markets.

\* \* \* \* \*

(18) Atlanta-Rome, Ga.

(19) Hartford-New Haven-New Britain-Waterbury-New London, Ct.

\* \* \* \* \*

(27) Columbus-Chillicothe, Ohio

\* \* \* \* \*

Note: Requests for changes to this list shall be made in the form of a petition for rulemaking pursuant to § 1.401 of this chapter, except that such petitions shall not be subject to the public notice provisions of § 1.403 of this chapter.

5. Section 76.55 is added to Subpart D to read as follows:

§ 76.55 Definitions applicable to the must-carry rules.

For purposes of the must-carry rules set forth in this subpart, the following definitions apply:

(a) Qualified noncommercial educational (NCE) television station. A qualified NCE television station is any television broadcast station which

(1) (i) Under the rules and regulations of the Commission in effect on March 29, 1990, is licensed by the Commission as an NCE television broadcast station and which is owned and operated by a public agency, nonprofit foundation,



corporation, or association; and

(ii) Has as its licensee an entity which is eligible to receive a community service grant, or any successor grant thereto, from the Corporation for Public Broadcasting, or any successor organization thereto, on the basis of the formula set forth in Section 396(k) (6) (B) of the Communications Act of 1934, as amended; or

(2) Is owned and operated by a municipality and transmits noncommercial programs for educational purposes, as defined in Section 73.612 of this chapter, for at least 50 percent of its broadcast week.

(3) This definition includes

(i) The translator of any NCE television station with five watts or higher power serving the franchise area,

(ii) A full-service station or translator if such station or translator is licensed to a channel reserved for NCE use pursuant to Section 73.606 of the rules, or any successor regulations thereto, and

(iii) Such stations and translators operating on channels not so reserved but otherwise qualified as NCE stations.

(b) Qualified local noncommercial educational (NCE) television station. A qualified local NCE television station is a qualified NCE television station:

(1) That is licensed to a community whose reference point, as defined in Section 76.53 is within 50 miles of the principal headend, as defined in Section 76.5(pp), of the cable system; or

(2) Whose Grade B service contour encompasses the principal headend, as defined in Section 76.5(pp), of the cable system.

(c) Local commercial television station. A local commercial television station is any full power television broadcast station, other than a qualified NCE television station as defined in paragraph (a) of this section, licensed and operating on a channel regularly assigned to its community by the Commission that, with respect to a particular cable system, is within the same television market, as defined below in paragraph (e) of this section, as the cable system, except that the term local commercial television station does not include:

(1) Low power television stations, television translator stations, and passive repeaters which operate pursuant to Part 74 of the rules.

(2) A television broadcast station that would be considered a distant signal under the cable compulsory copyright license, 17 U.S.C. § 111, if such station does not agree to indemnify the cable operator for any increased copyright liability resulting from carriage on the cable system; or

(3) A television broadcast station that does not deliver to the principal headend, as defined in Section 76.5(pp), of a cable system either a signal level of -45dBm for UHF signals or -49dBm for VHF signals at the input terminals of the signal processing equipment, i.e., the input to the first active component of the signal processing equipment relevant to the signal at

issue, if such station does not agree to be responsible for the costs of delivering to the cable system a signal of good quality or a baseband video signal.

(d) Qualified low power station. A qualified low power station is any television broadcast station conforming to the low power television rules contained in Part 74 of the rules, only if:

(1) Such station broadcasts for at least the minimum number of hours of operation required by the Commission for full power television broadcast stations under Part 73 of the rules;

(2) Such station meets all obligations and requirements applicable to full power television broadcast stations under Part 73 of this chapter, with respect to the broadcast of nonentertainment programming; programming and rates involving political candidates, election issues, controversial issues of public importance, editorials, and personal attacks; programming for children; and equal employment opportunity; and the Commission determines that the provision of such programming by such station would address local news and informational needs which are not being adequately served by full power television broadcast stations because of the geographic distance of such full power stations from the low power station's community of license;

(3) Such station complies with interference regulations consistent with its secondary status pursuant to Part 74 of this chapter;

(4) Such station is located no more than 35 miles from the cable system's principal headend, as defined in Section 76.5(pp), and delivers to that headend an over-the-air signal of good quality;

(5) The community of license of such station and the franchise area of the cable system are both located outside of the largest 160 Metropolitan Statistical Areas, ranked by population, as determined by the Office of Management and Budget on June 30, 1990, and the population of such community of license on such date did not exceed 35,000; and

(6) There is no full power television broadcast station licensed to any community within the county or other equivalent political subdivision (of a State) served by the cable system.

(e) Television market. For purposes of the must-carry rules:

(1) A local commercial broadcast television station's market shall be defined as its Area of Dominant Influence (ADI) as determined by Arbitron and published in its Television ADI Market Guide or any successor publication, except that for areas outside the contiguous 48 states the area of dominant influence may be defined using Nielsen's Designated Market Area (DMA), where applicable, and that Puerto Rico, the U.S. Virgin Islands and Guam will each be considered one ADI;

(2) A cable system's television market(s) shall be the one or more ADIs in which the communities it serves are located;

(3) In addition, the county in which a station's community of license is

located will be considered within its market.

Note: For the 1993 must-carry/retransmission consent election, the ADI assignments specified in the 1991-1992 Television ADI Market Guide will apply. ADI assignments will be updated at three year intervals. For the 1996 election period, the 1994-1995 ADI list will be used; the applicable list for the 1999 election will be the 1997-1998 list, etc.

(f) Network. For purposes of the must-carry rules, a commercial television network is an entity that offers programming on a regular basis for 15 or more hours per week to at least 25 affiliates in 10 or more states.

6. Section 76.56 is added to Subpart D to read as follows:

§ 76.56 Signal carriage obligations.

(a) Carriage of Qualified Noncommercial Educational Stations. A cable television system shall carry qualified NCE television stations in accordance with the following provisions:

(1) Each cable operator shall carry on its cable television system any qualified local NCE television station requesting carriage, except that

(i) Systems with 12 or fewer usable activated channels, as defined in Section 76.6(o), shall be required to carry the signal of one such station;

(ii) Systems with 13 to 36 usable activated channels, as defined in Section 76.5(o), shall be required to carry at least one qualified local NCE station, but not more than three such stations; and

(iii) Systems with more than 36 usable activated channels shall be required to carry the signals of three qualified local NCE educational television stations; however a cable system with more than 36 channels shall not be required to carry stations whose programming substantially duplicates the programming of another qualified local NCE station.

Note: For purposes of this paragraph, a station will be deemed to "substantially duplicate" the programming of another station if it broadcasts the same programming, simultaneous or non-simultaneous, for more than 50 percent of prime time, as defined in Section 76.5(n), and more than 50 percent outside of prime time over a three month period.

(2) (i) In the case of a cable system with 12 or fewer channels that operates beyond the presence of any qualified local NCE stations, the cable operator shall import one qualified NCE television station.

(ii) A cable system with between 13 and 36 channels that operates beyond the presence of any qualified local NCE stations, the cable operator shall import at least one qualified NCE television station.

(3) A cable system with 12 or fewer usable activated channels shall not be required to remove any programming service provided to subscribers as of March 29, 1990, to satisfy these requirements, except that the first available channel must be used to satisfy these requirements.

(4) A cable system with 13 to 36 usable activated channels which carries

the signal of a qualified local NCE station affiliated with a State public television network shall not be required to carry more than one qualified local NCE station affiliated with such network, if the programming of such additional stations substantially duplicates, as defined in the note in paragraph (a) (1) of this section, the programming of a qualified local NCE television station receiving carriage.

(5) Notwithstanding the requirements of paragraph (a) (1) of this section, all cable operators shall continue to provide carriage to all qualified local NCE television stations whose signals were carried on their systems as of March 29, 1990. This requirement may be waived with respect to a particular cable operator and a particular NCE station, upon the written consent of the cable operator and the station.

(b) Carriage of Local Commercial Television Stations. Effective June 2, 1993, a cable television system shall carry local commercial broadcast television stations in accordance with the following provisions:

(1) A cable system with 12 or fewer usable activated channels, as defined in Section 76.5(oo), shall carry the signals of at least three local commercial television stations, except that if such system had 300 or fewer subscribers on October 5, 1992, it shall not be subject to these requirements as long as it does not delete from carriage any broadcast television station.

(2) A cable system with more than 12 usable activated channels, as defined in Section 76.(oo), shall carry local commercial television stations up to one-third of the aggregate number of usable activated channels of such system.

(3) If there are not enough local commercial television stations to fill the channels set aside under paragraphs (b) (1) and (b) (2) of this section, a cable operator of a system with 35 or fewer usable activated channels, as defined in Section 76(oo), shall, if such stations exist, carry one qualified low power television station and a cable system with more than 35 usable activated channels shall carry two qualified low power stations.

(4) Whenever the number of local commercial television stations exceeds the maximum number of signals a cable system is required to carry under paragraph (b) (1) or (b) (2) of this section, the cable operator shall have discretion in selecting which such stations shall be carried on its cable system, except that

(i) Under no circumstances shall a cable operator carry a qualified low power station in lieu of a local commercial television station; and

(ii) If the cable operator elects to carry an affiliate of a broadcast network, as defined in Section 76.55(f) of the rules, such cable operator shall carry the affiliate of such broadcast network whose community of license reference point, as defined in Section 76.53 of the rules, is closest to the principal headend, as defined in Section 76.5(pp), of the cable system.

(5) A cable operator is not required to carry the signal of any local commercial television station that substantially duplicates the signal of another local commercial television station that is carried on its cable system, or to carry the signals of more than one local commercial television

station affiliated with a particular broadcast network, as defined in Section 76.55(f). However, if a cable operator declines to carry duplicating signals, such cable operator shall carry the station whose community of license reference point, as defined in Section 76.53 of the rules, is closest to the principal headend of the cable system. For purposes of this paragraph, substantially duplicates means that a station regularly simultaneously broadcasts the identical programming as another station for more than 50 percent of the broadcast week. For purposes of this definition, only identical episodes of a television series are considered duplicative and commercial inserts are excluded from the comparison. When the stations being compared are licensed to communities in different time zones, programming aired by a station within one hour of the identical program being broadcast by another station will be considered duplicative.

(6) A cable operator is not required to carry on any tier, and is not prohibited from carrying on any tier, the signal of any commercial television station whose programming week consists of more than 50 percent sales presentations or program length commercials.

(c) Use of public, educational, or governmental (PEG) channels. A cable operator required to carry more than one signal of a qualified low power station or to add qualified local NCE stations in fulfillment of these must-carry obligations may do so, subject to approval by the franchising authority pursuant to Section 611 of the Communications Act of 1934, as amended, by placing such additional station on public, educational, or governmental channels not in use for their designated purposes.

(d) Availability of signals.

(1) Local commercial television stations carried in fulfillment of the requirements of this section shall be provided to every subscriber of a cable system. Such signals shall be viewable via cable on all television receivers of a subscriber which are connected to a cable system by a cable operator or for which a cable operator provides a connection.

(2) Qualified local NCE television stations carried in fulfillment of the carriage obligations of a cable operator under this section shall be available to every subscriber as part of the cable system's lowest priced service tier that includes the retransmission of local commercial television broadcast signals.

(3) If a cable operator authorizes subscribers to install additional receiver connections, but does not provide the subscriber with such connections, or with the equipment and materials for such connections, the operator shall notify such subscribers of all broadcast stations carried on the cable system which cannot be viewed via cable without a converter box and shall offer to sell or lease such a converter box to such subscribers. Such notification must be provided by June 2, 1993, and annually thereafter and to each new subscriber upon initial installation. The notice, which may be included in routine billing statements, shall identify the signals that are unavailable without an additional connection, the manner for obtaining such additional connection and instructions for installation.

(e) Identification of must-carry signals. A cable operator shall respond in writing within 30 days to any written request by any person for the identification of the signals carried on its system in fulfillment of the requirements of this section. Pursuant to Section 76.302, a cable operator must place a list of the broadcast television signals carried in fulfillment of these must-carry obligations in its public file.

(f) Carriage of additional broadcast television signals on such system shall be at the discretion of the cable operator, subject to the retransmission consent rules, Section 76.64. A cable system may also carry any ancillary service transmission on the vertical blanking interval or the aural baseband of any television broadcast signal, including, but not limited to, multichannel television sound and teletext.

7. Section 76.57 is added to Subpart D to read as follows:

§ 76.57 Channel positioning.

(a) At the election of the licensee of a local commercial broadcast television station carried in fulfillment of the must-carry obligations, a cable operator shall carry such signal on the cable system channel number on which the local commercial television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, or on the channel on which it was carried on January 1, 1992.

(b) At the election of the licensee of a qualified local NCE broadcast television station carried in fulfillment of the must-carry obligations, a cable operator shall carry such signal on the cable system channel number on which the qualified NCE television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985.

(c) Any signal carried in fulfillment of the must-carry obligations may be carried on such other channel number as is mutually agreed upon by the station and the cable operator.

(d) At the time a local commercial station elects must-carry status pursuant to Section 76.64, such station shall notify the cable system of its choice of channel position as specified in paragraphs (a)-(c) of this section. A qualified NCE stations shall notify the cable system of its choice of channel position when it requests carriage. Channel positioning requests from local commercial stations shall be fulfilled by the cable operator no later than October 6, 1993.

Note: Any existing agreement for channel position between a local commercial station entitled to must-carry status and a cable operator entered into prior to June 26, 1990, may continue through the expiration of such agreement.

8. Section 76.58 is added to Subpart D to read as follows:

§ 76.58 Notification.

(a) Effective April 2, 1993, a cable operator shall provide written notice to any broadcast television station at least 30 days prior to either deleting from carriage or repositioning that station. Such notification shall also be provided to subscribers of the cable system.

Note: No deletion or repositioning of a local commercial television station shall occur during a period in which major television ratings services measure the size of audiences of local television stations. For this purpose, such periods are the four national four-week ratings periods -- generally including February, May, July and November -- commonly known as audience sweeps.

(b) By May 3, 1993, a cable operator must notify all qualified NCE stations of its designated principal headend by certified mail.

(c) A cable operator shall provide written notice by certified mail to all stations carried on its system pursuant to the must-carry rules at least 60 days prior to any change in the designation of its principal headend, and shall include the new designation in its public file.

(d) By May 3, 1993, a cable operator must notify all local commercial and NCE stations that may not be entitled to carriage because they either

(1) Fail to meet the standards for delivery of a good quality signal to the cable system's principal headend or

(2) May cause an increased copyright liability to the cable system.

(e) By June 2, 1993, a cable operator must send by certified mail a copy of a list of all broadcast television stations carried by its system and their channel positions to all local commercial and noncommercial television stations, including those not designated as must-carry stations and those not carried on the system.

9. Section 76.59 is added to Subpart D to read as follows:

§ 76.59 Modification of television markets.

(a) The Commission, following a written request from a broadcast station or a cable system, may deem that the television market of a particular commercial television broadcast station should include additional communities within its television market or exclude communities from such station's television market. In this respect, communities may be considered part of more than one television market.

(b) Such requests for modification of a television market shall be submitted in accordance with Section 76.7 of the rules, petitions for special relief.

(c) A cable operator shall not delete from carriage the signal of a commercial television station during the pendency of any proceeding pursuant to this section.

10. Section 76.60 is revised in its entirety to read as follows:

§ 76.60 Compensation for carriage.

A cable operator is prohibited from accepting or requesting monetary payment or other valuable consideration in exchange either for carriage or channel positioning of any broadcast television station carried in fulfillment of the must-carry requirements, except that

(a) Any such station may be required to bear the costs associated with delivering a good quality signal or a baseband video signal to the principal headend of the cable system; or

(b) A cable operator may accept payments from stations which would be considered distant signals under the cable compulsory copyright license, 17 U.S.C. § 111, as indemnification for any increased copyright liability resulting from carriage of such signal.

Note: A cable operator may continue to accept monetary payment or other valuable consideration in exchange for carriage or channel positioning of the signal of any local commercial television station carried in fulfillment of the must-carry requirements, through, but not beyond, the date of expiration of an agreement between a cable operator and a local commercial television station entered into prior to June 26, 1990.

11. Section 76.61 is added to Subpart D to read as follows:

§ 76.61 Disputes concerning carriage.

(a) Complaints regarding carriage of local commercial television stations.

(1) Whenever a local commercial television station or a qualified low power television station believes that a cable operator has failed to meet its carriage or channel positioning obligations, pursuant to Sections 76.56 and 76.57 of the rules, such station shall notify the operator, in writing, of the alleged failure and identify its reasons for believing that the cable operator is obligated to carry the signal of such station or position such signal on a particular channel.

(2) The cable operator shall, within 30 days of receipt of such written notification, respond in writing to such notification and either commence to carry the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with the channel positioning and repositioning and other requirements of the must-carry rules. If a refusal for carriage is based on the station's distance from the cable system's principal headend, the operator's response shall include the location of such headend. If a cable operator denies carriage on the basis of the failure of the station to deliver a good quality signal at the cable system's principal headend, the cable operator must provide a list of equipment used to make the measurements, the point of measurement and a list and detailed description of the reception and over-the-air signal processing equipment used, including sketches such as block diagrams and a description of the methodology used for processing the signal at issue, in its response.

(3) A local commercial television station or qualified low power television station that is denied carriage or channel positioning or repositioning in



accordance with the must-carry rules by a cable operator may file a complaint with the Commission in accordance with the procedures set forth in Section 76.7 of the rules relating to must-carry complaints. In addition to the requirements of Section 76.7, such complaint shall specifically allege the manner in which such cable operator has failed to meet its obligations and the basis for such allegations.

(4) If the Commission determines that a cable operator has failed to meet its must-carry obligations, the Commission shall order that, within 45 days of such order or such other time period as the Commission may specify, the cable operator reposition the complaining station or, in the case of an obligation to carry a station, commence or resume carriage of the station and continue such carriage for at least 12 months. If the Commission determines that the cable operator has fully met the must-carry requirements, it shall dismiss the complaint.

(b) Complaints regarding carriage of qualified local NCE television stations.

(1) Whenever a qualified local NCE television station believes that a cable operator has failed to comply with the signal carriage or channel positioning requirements, pursuant to Sections 76.56-76.57, the station may file a complaint with the Commission in accordance with the procedures set forth in Section 76.7 of the rules. In addition to the requirements of Section 76.7, such complaint shall specifically allege the manner in which such cable operator has failed to comply with such requirements and state the basis for such allegations.

(2) If the Commission determines that a cable operator has failed to meet its must-carry obligations, the Commission shall order that, within 45 days of such order or such other period as the Commission may specify, the cable operator reposition the complaining station or, in the case of an obligation to carry a station, commence or resume carriage of the station and continue such carriage for a period of time the Commission deems appropriate for the specific case under consideration. If the Commission determines that the cable operator has fully met the must-carry requirements, it shall dismiss the complaint.

12. Section 76.62 is revised to read as follows:

§ 76.62 Manner of carriage.

(a) Cable operators shall carry the entirety of the program schedule of any television station carried unless carriage of specific programming is prohibited, and other programming authorized to be substituted, under section 76.67 or subpart F of Part 76 of the rules.

(b) Each such television broadcast signal carried shall be carried without material degradation in compliance with technical standards set forth in subpart K of this part.

(c) Each local commercial television station whose signal is carried shall,

to the extent technically feasible and consistent with good engineering practice, be provided no less than the same quality of signal processing and carriage provided for carriage of any other type of standard television signal.

(d) Each qualified local noncommercial educational television station whose signal is carried shall be provided with bandwidth and technical capacity equivalent to that provided to commercial television broadcast stations carried.

(e) Each commercial broadcast television station carried pursuant to Section 76.56 shall include in its entirety the primary video, accompanying audio, and closed captioning data contained in line 21 of the vertical blanking interval and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers. Where appropriate and feasible, operators may delete signal enhancements, such as ghost-canceling, from the broadcast signal and employ such enhancements at the system headend or headends.

(f) Each qualified local NCE television station carried pursuant to Section 76.56 shall include in its entirety the primary video, accompanying audio, and closed captioning data contained in line 21 of the vertical blanking interval and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers, that may be necessary for receipt of programming by handicapped persons or for educational or language purposes.

14. Section 76.63 is removed.

15. Section 76.64 is added to Subpart D to read as follows:

§76.64 Retransmission consent.

(a) After 12:01 A.M. on October 6, 1993, no multichannel video programming distributor shall retransmit the signal of any commercial broadcasting station without the express authority of the originating station, except as provided in paragraph (b) of this section

(b) A commercial broadcast signal may be retransmitted without express authority of the originating station if

(1) The distributor is a cable system and the signal is that of a commercial television station (including a low power television station) that is being carried pursuant to the Commission's must-carry rules set forth in Section 76.56;

(2) The multichannel video programming distributor obtains the signal from a satellite carrier and the originating station was a superstation on May 1, 1991; or

(3) The distributor is a satellite carrier and the signal is transmitted directly to a home satellite antenna, provided that:

(i) The broadcast station is not owned or operated by, or affiliated with, a broadcasting network and its signal was retransmitted by a satellite carrier on May 1, 1991, or

(ii) The broadcast station is owned or operated by, or affiliated with a broadcasting network, and the household receiving the signal is an unserved household.

(c) For purposes of this section, the following definitions apply:

(1) A satellite carrier is an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission, to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing;

(2) A superstation is a television broadcast station other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier;

(3) An unserved household with respect to a television network is a household that

(i) Cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity of a primary network station affiliated with that network, and

(ii) Has not, within 90 days before the date on which that household subscribes, either initially or on renewal, received secondary transmissions by a satellite carrier of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with that network.

(4) A primary network station is a network station that broadcasts or rebroadcasts the basic programming service of a particular national network;

(5) The terms "network station," and "secondary transmission" have the meanings given them in 17 U.S.C. §111(f).

(d) A multichannel video program distributor is an entity such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, a television receive-only satellite program distributor, or a satellite master antenna television system operator, that makes available for purchase, by subscribers or customers, multiple channels of video programming.

(e) Provision of local broadcast signals by master antenna television (MATV) facilities or by VHF/UHF antennas on individual dwellings is not subject to retransmission consent, provided that these signals are available without charge at the residents' option. That is, the antenna facilities must be owned

by the individual subscriber or building owner and not under the control of the multichannel video programming distributor.

(f) Commercial television stations are required to make elections between retransmission consent and must-carry status according to the following schedule:

(1) The initial election must be made by June 17, 1993.

(2) Subsequent elections must be made at three year intervals; the second election must be made by October 1, 1996 and will take effect on January 1, 1997; the third election must be made by October 1, 1999 and will take effect on January 1, 2000, etc.

(3) Television stations that fail to make an election by the specified deadline will be deemed to have elected must carry status for the relevant three-year period.

(4) New television stations must make their initial election within 30 days of commencing regular broadcasts; such initial elections shall take effect 90 days after they are made.

(5) Television broadcast stations that become eligible for must carry status with respect to a cable system or systems due to a change in the market definition may, within 30 days of the effective date of the new definition, elect must-carry status with respect to such system or systems. Such elections shall take effect 90 days after they are made.

(g) If one or more franchise areas served by a cable system overlaps with one or more franchise areas served by another cable system, television broadcast stations are required to make the same election for both cable systems.

(h) On or before each must-carry/retransmission consent election deadline, each television broadcast station shall place copies of all of its election statements in the station's public file, and shall send via certified mail to each cable system in the station's defined market a copy of the station's election statement with respect to that operator.

(i) Notwithstanding a television station's election of must-carry status, if a cable operator proposes to retransmit that station's signal without according the station must-carry rights (i.e., pursuant to § 76.56(f)), the operator must obtain the station's express authority prior to retransmitting its signal.

(j) A cable system that changes its technical configuration in such a way as to integrate two formerly separate cable systems must give 90 days notice of its intention to do so to any television broadcast stations that have elected must-carry status with respect to one system and retransmission consent status with respect to the other. If the system and the station do not agree on a uniform election 45 days prior to integration, the cable system may require the station to make such a uniform election 30 days prior to integration.

(k) Retransmission consent agreements between a commercial broadcast station and a multichannel video programming distributor shall be in writing and shall grant consent for retransmission of the station's entire signal. Broadcasters may assign their retransmission consent rights to another party, provided that the right assigned encompasses retransmission of the entire signal of the broadcast station.

16. Section 76.66 is removed.

17. Section 76.92 is amended by adding paragraph (g) to read as follows:

§ 76.92 Network non-duplication; extent of protection.

\* \* \* \* \*

(g) A community unit is not required to delete the duplicating network programming of any qualified NCE television broadcast station that is carried in fulfillment of the cable television system's mandatory signal carriage obligations, pursuant to Section 76.56.

\* \* \* \* \*

18. Section 76.300 is amended by revising paragraph (a) to read as follows:

§ 76.300 Scope of applications.

(a) The provisions of §§ 76.302, 76.306, and 76.307 are applicable to all cable television systems.

\* \* \* \* \*

19. Section 76.302 is added to Subpart H to read as follows:

§ 76.302 Required record keeping for must-carry purposes.

(a) Effective June 17, 1993, the operator of every cable television system shall maintain for public inspection a file containing a list of all broadcast television stations carried by its system in fulfillment of the must-carry requirements pursuant to § 76.56 of the rules. Such list shall include the call sign, community of license, broadcast channel number, cable channel number, and in the case of a noncommercial educational broadcast station, whether that station was carried by the cable system on March 29, 1990.

(b) The operator of every cable television system shall maintain for public inspection the designation and location of its principal headend.

(c) Such records must be maintained in accordance with the provisions of Section 76.305(b).

(d) Upon written request from any person, a cable operator is required to

provide the list of signals specified in paragraph (a) in writing within 30 days of receipt of such request.